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No. 432

No. 45,606

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

STATE OF MISSOURI, Respondent,

versus

JAMES G. EATON, Petitioner.

From the

SUPREME COURT OF THE STATE OF MISSOURI

Division No. 2

PETITION FOR CERTIORARI

PETITIONER'S BRIEF AND ARGUMENT

PETITIONER
JAMES G. EATON,
Register No. 59489,
Church Farm,
Missouri State Prison,
Jefferson City, Missouri.

PROMPT PRINTING CO.

No. 45,606

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PETITION FOR CERTIORARI

PETITIONER'S BRIEF AND ARGUMENT

In the Supreme Court of the United States—Petition for Writ of Certiorari to review an affirmed judgment.

The jurisdiction of the Supreme Court of the United States is invoked under Section I of the 14th Amendment of the Constitution of the United States and the 7th Amendment of the Constitution of the United States.

This case was instituted in the Circuit Court of Buchanan County, Missouri, on July 23, 1953, by petitioner filing in the original cause his motion to set aside and vacate the judgment of conviction against him for murder in the second degree assessing punishment at imprisonment in the Missouri State Penitentiary for a term of eighteen years. This judgment was rendered in the Circuit Court of Buchanan County, Missouri, the 22nd day of May, 1945. (See Exhibit A, original Transcript, p.p. 12-13.) Upon the grounds that the judgment of conviction against him was procured by perjured testimony by the prosecution and known to be perjured testimony by the prosecution and the suppression of evidence favorable to petitioner in said cause (Exhibit A, Transcript, p. 1-7) on appeal to the Supreme Court of Missouri, the judgment of Buchanan County Court dismissing said cause was reversed and remanded for a hearing on January 9th, 1956, in the Circuit Court of Buchanan County. Petitioner filed a motion for trial by jury which was overruled by the Court and March 21, 1956, the Court overruled petitioner's motion in nature of a Writ of Error Coram Nobis.

Notice of appeal to the Supreme Court of Missouri was filed. The cause herein is from the order of the Supreme Court of Missouri affirming the decision of the Buchanan County Court. Appended is a copy of said judgment rendered on the day of May 13, 1957 (see Exhibits B and H), which deprived petitioner of his constitutional rights and guaranties contrary to and in violation of the provisions of the Constitution and the laws of the State

of Missouri and of the United States. (Constitution of Missouri (1945), Article 5, Section 3) (Constitution of Missouri (1945), Article 1, Section 10) (Constitution of the United States—7th and 14th Amendments.)

The prosecuting attorney, Joseph A. Sherman, of Buchanan County in charge of said prosecution, with full knowledge of the true facts, did knowingly and intentionally coerce and intimidate the witness Jones to offer and present perjured testimony at the trial, intending thereby to conceal and suppress in the trial of said cause, material evidence of vital importance and prevent petitioner from making an effective defense in said cause. Petitioner verily believes a conviction could not otherwise have been obtained as the relevant facts would not support a charge of murder in any degree. Petitioner states that said conspiracy of the prosecuting attorney and Jones caused and resulted in a violation of the constitutional rights of petitioner, whereby petitioner was deprived of the benefits of the due process as provided by the 14th Amendment of the Constitution of the United States. (See testimony of Albert "Cotton" Jones, Exhibit A, Transcript, pp. 61-68).

Also, the jurisdiction of said Court in this cause was abused and forfeited and said Court was thereby deprived of power and right to render judgment of conviction. That said judgment and sentence of petitioner is accordingly illegal and void. Petitioner further states that Joseph A. Sherman, in official capacity as prosecuting attorney and legalized agent of the State of Missouri in charge of said prosecution, did knowingly and intentionally suppress the

evidence of Julia Hollins which was favorable to petitioner in order to obtain a conviction of petitioner and thereby deprive petitioner of due process of law and his constitutional rights under the provisions of Section I of the 14th Amendment of the Constitution of the United States and Section X of Article I of the 1945 Constitution of Missouri. (See testimony of Julia Hollins and Gus Williams, Exhibit A, Transcript, p. 179-184 and p. 186-188.)

The Federal Courts and the Courts of this State have in many cases held that the use of perjured testimony known to be perjured by the prosecuting authorities and the suppression of evidence favorable to the defendant by the prosecution, constitute a deprivation of rights guaranteed by the Constitution of the United States and by the State of Missouri.

Pyle vs. State of Kansas, 317 U. S. 213, 63 S. Ct. 177, 178, (1, 2).

Mooney vs. Holohan, 294, U. S. 103, 55 S. Ct. 340, 341, 342, (1, 2).

Cobb vs. Hunter (10th Cir., C.C.A.), 167 F. (2) 888, 889, (1, 2) (3, 4), (5).

United States ex rel. Alemida vs. Baldi (3rd Cir., C.C.A.), 195F (2) 815, 816, 821 (1, 2) (3).

United States vs. Rutkin (3rd Cir. C.C.A.), 212F. (2) 641, 643-645 (3-5) (6) (7) (8, 9).

State vs. Eaton (Mo.) 280 S. W. (2) 63, 65-66 (1), (2).

WRIT OF HABEAS CORPUS

On the 28th day of May, 1947, a petition for Writ of Habeas Corpus was filed in the Circuit Court of Cole County alleging facts set forth in affidavits. This cause was taken under advisement by the Court until November 6, 1947, when the Court entered its order dismissing the petition for Writ of Habeas Corpus, giving no opinion.

MOTION FOR REHEARING ON WRIT OF HABEAS CORPUS

On November 16, 1947, petitioner filed a motion for rehearing. Thereafter on January 10, 1948, a further hearing was had. The testimony given at this hearing was reduced to writing and certified by the official court reporter, L. R. Lighton.

This cause was also taken under advisement by the court on March 23, 1948. The court entered his order dismissing the petition for Writ of Habeas Corpus, "No Opinion." (See Exhibit A, Transcript, p. 199-200.)

The petition for Writ of Habeas Corpus alleged that petitioner was unlawfully restrained of his liberty for the reason he was denied his constitutional rights and guaranties and denied due process of law, under the Constitution of Missouri and the Constitution of the United States, for the reason the prosecuting attorney forced Albert "Cotton" Jones, a witness for the State, to give perjured testimony. (See Exhibit A, Transcript, p. 189-195.) Also, the evidence of Julia Hollins, a witness subpoenaed by the

State, whose testimony it was subsequently learned would have been favorable to petitioner, was suppressed by the prosecution. (See Exhibit A, Transcript, p. 186-189.)

Gus Williams, a co-partner of Albert "Cotton" Jones, testified that he was present at this conspiracy as anything that would affect Jones' interest would also affect his interest in the business. (See Exhibit A, Transcript, p. 179-186—testimony of Gus Williams.)

Petition for Writ of Habeas Corpus in the Supreme Court

Thereafter, on June 2, 1948, petitioner filed a writ of Habeas Corpus in the Supreme Court of Missouri. The petition alleged that petitioner was unlawfully restrained of his liberty for the reason he was denied his constitutional rights and guaranties and was denied due process of law under the Constitution of Missouri and the Constitution of the United States, which was on June 14, 1948, dismissed by the Court with prejudice upon the ground that petition failed to state a claim upon which relief could be granted. Case No. 41,471.

Petition for Habeas Corpus in the Supreme Court

Petition for Writ of Habeas Corpus in the Supreme Court of Missouri was filed September 7, 1951, including the testimony of the Habeas Corpus hearing in Cole County; the transcript, containing the adverse testimony of Albert "Cotton" Jones, and which was again denied on October 8, 1951, for the reason that the petition and transcript failed to state a claim upon which relief could be granted. Case No. 43,196.

Writ of Error Coram Nobis

On July 23, 1953, a motion in the form of a Writ of Error Coram Nobis was filed in the Circuit Court of Buchanan County to set aside and vacate the judgment of conviction against petitioner rendered in the Circuit Court of Buchanan County on the 22nd day of May, 1945 (Exhibit A, Transcript, p. 156). Upon the grounds that perjured evidence by the state witness, Albert "Cotton" Jones, was knowingly introduced by the prosecuting attorney against him at his trial and that the prosecuting attorney knowingly suppressed the evidence of Julia Hollins which would have been favorable to him in order to obtain the conviction of petitioner. Respondent filed its motion to dismiss which was sustained by the court without a hearing. A motion for a rehearing was filed and then ostensible motives were put forward by counsel to conceal the real motive. This continued until the petitioner was forced to resort to the Supreme Court agencies on unauthorized practice to get the cause out of the Circuit Court of Buchanan County.

The Attorney General of the State of Missouri complained that petitioner was pursuing the wrong remedy for relief. Thereafter, on appeal to the Supreme Court of Missouri, the judgment of dismissal was reversed and said cause remanded for a hearing on the merits.

The Supreme Court here determined that the motion filed by petitioner to set aside and vacate the original judgment of conviction is the proper remedy for relief. (See State vs. Eaton (Mo.) 280 S.W. (2) (63).

Thereafter, on January 9, 1956, in the Circuit Court of Buchanan County, due to the collusion and conspiracy that was known to exist in that Court, petitioner filed a motion for trial by jury which was overruled by the Court on February 20th, 1956. Answer to said motion was filed and preserved in the record. (See Exhibit C, Transcript of Coram Nobis hearing, p. 146-150.)

This cause was tried on February 20, 21, 1956, without a jury. This hearing was a legal illusion to establish their record. It was obvious that pressure had been applied to suppress this hearing. The attorneys assumed the defense have been so lost to professional ethics that many facts pertinent to the cause have been suppressed as this evidence, which was of vital importance to petitioner, would also expose the conniving that went on in this Court. The form of justice that was dispensed in this Court was well known to the people of Northwest Missouri; one person alone cannot perpetrate this form of justice. There must be a conspiracy. Petitioner never, at any time, gave counsel leave to waive any right. This cause was remanded for a hearing by the Supreme Court of Missouri under the provisions of Rule 27.26. The successor to the common law Writ of Error Coram Nobis, Rule 27.26, is broader in scope and was intended to include all the evidence vital to establishing the facts in the case. The motion in the nature of a Writ of Error Coram Nobis was filed in this Court July 23, 1953. At that time, the witnesses, Albert "Cotton" Jones and Julia Hollins, were living. In the interim, both witnesses were deceased.

IN THE SUPREME COURT OF MISSOURI

State of Missouri, Respondent,

vs. No. 45606

James G. Eaton, Appellant.

1.

Comes now appellant, James G. Eaton, in the above entitled cause, and moves the Court to set aside the judgment affirming the judgment of the Circuit Court of Buchanan County, rendered by James S. Rooney, Special Judge, and grant appellant a rehearing thereof, upon the following grounds, to-wit:

2.

Due to the conspiracy and collusion that existed in the Circuit Court of Buchanan County, and the connivance of the legal fraternity, appellant was, and is, unable to employ counsel that would present a defense.

Throughout these proceedings, the State has complained of the failure of trial counsel for appellant to act in his defense. Also the State has complained of the time element.

On or before July 23, 1954, Mr. Leonard Johnson called at the penitentiary and was employed by appellant on the recommendation of Samuel W. James, Jr., of Jefferson City, Missouri. A contract was drawn. (See Exhibit D and I.) This contract states that he is to employ Samuel W. James of Jefferson City as defense counsel in filing a motion in the nature of a Writ of Error Coram

Nobis in the Circuit Court of Buchanan County. This proceeding was filed July 23, 1953, and was not heard until almost three years afterward. It was obvious that pressure was applied to suppress this hearing. Before this hearing, I demanded that Mr. Samuel W. James, Jr., of Jefferson City be allowed to appear and defend my legal rights, as stipulated in the contract. Mr. Leonard Johnson refused. I then tried to employ other attorneys. It was impossible for me to employ counsel that would present the facts. They informed me it was Mr. Johnson's case and that they would act only as Mr. Johnson's assistant.

I have a letter from Judge James S. Rooney in regard to the date of this proceeding, while trying to engage counsel. Also, I have the contract Mr. Leonard Johnson signed, and it is marked, "Paid in full."

I was aware that I was being sold down the river again at this hearing but was powerless to do anything about it.

I hope that this Court will realize that I was still a prisoner and had to conduct myself accordingly. I never, at any time, gave counsel leave to waive any of my rights, and asked counsel many times to interpose objections. These requests were ignored.

The record discloses that I have hired four attorneys from Buchanan County. William Sawyers, now State Senator from Buchanan County, was fair enough to say that any attorney from Buchanan County who accepted my case was politically dead, **if he went through with it.**

3.

The hearing on the motion, in the form of a Writ of Error Coram Nobis, was a legal illusion to establish a record that would not expose the form of justice that was rendered in the Circuit Court of Buchanan County, Missouri.

4.

With all due respect to this Honorable Court, they should be given the opportunity to hear the relevant facts as they have been suppressed and kept from the record. These facts should alter the concept of the judgment.

5.

The Harlem Club in St. Joseph, Missouri, is located about a block from the Court House and appellant lived in the same block. It was his custom to drop in there occasionally as this Club was patronized by people from all walks of life. On one occasion, appellant recalls going in there and finding a Probate Judge and a Judge of the Missouri Supreme Court as fellow patrons.

On February 10, 1945, appellant was on his way to his room, had in his pocket in cash the sum of Sixty-three Hundred Dollars ($6300), when he stopped in the Harlem Club. (Later, he gave this money to Jailer Buck Smart to deposit in the bank for him, as the bank records will show.)

No motive for the unprovoked attack on appellant at the Harlem Club has ever been explained. The fight started by William Van Ross and Orlando T. Strother,

two ex-convicts with long criminal records, may have been only a diversion to conceal their real purpose. Orlando T. Strother was on parole from the Missouri State Penitentiary and was later killed in front of the Harlem Club while trying to rob a man. (See Exhibit E, copy record of Orlando T. Strother. Consult records of Buchanan County for further details.)

It is an old trick to start a fight, crowd upon the intended victim, seize his cash, and depart for parts unknown. Nobody ever seems to know just exactly what happened. The criminal records of both of these men are available to this Court at the Missouri Penitentiary.

6.

At the original trial, May term, 1945, the Court wanted to know in what part of the body William Van Ross had been shot. When a man is four or five feet from you, and slashing at you with a knife, you don't take the time to deliberately aim at any particular part of the body. You shoot fast and hope it stops the attacker. One significant fact is that the coat shown by the prosecutor had no powder burns on it. (See Exhibit A, Transcript, p. 91 and 92.) At this range, it would be impossible to shoot through a cloth coat and not leave powder burns.

7.

The alleged weapon was shown to the jury with two lead bullets. No ballistic test has proved the two bullets came from this particular weapon. I later tried to have a ballistic test made by qualified experts in this line of work

and was informed that the whole record, including the exhibits, had disappeared from the Prosecuting Attorney's office. Both my sister and brother have made repeated efforts to see these records.

Doesn't it seem a little queer that the most needed evidence in this case has been hidden or destroyed?

I hope the Court will give full consideration to the affidavit of Thomas Randel. (See Exhibit C, Transcript, p. 152-153.) He states there was another gun being discharged at the same time.

If this proceeding had not been delayed, and had been given a hearing while Albert "Cotton" Jones and Julia Hollins were living in July, 1953, when the Writ of Error Coram Nobis was filed, there isn't any doubt the record would have been different.

Had Leonard Johnson permitted Samuel W. James to appear in my behalf, as stipulated in the contract, there isn't any doubt in appellant's mind that the record would have been different.

When Albert "Cotton" Jones appeared at the Habeas Corpus hearing in Jefferson City, he was co-partner in the Harlem Club and was active in managing the business.

Most any person is willing to concede that it requires an alert, active mind to operate a gambling house. Albert "Cotton" Jones was thoroughly questioned and cross examined by the Attorney General of Missouri at this hearing. His evidence was given in a straight-forward manner and his answers to questions were in plain everyday

language. He showed no outward signs of senility at the time.

The State made no claim of senility at the original trial a few months before the Habeas Corpus Hearing when Albert "Cotton" Jones was testifying for the State. The claim that Albert "Cotton" Jones was senile and incompetent to give testimony in favor of appellant should not be considered. Everyone who knew Albert "Cotton" Jones personally during his lifetime would be willing to admit that he was not an educated man. It is very doubtful he knew the meaning of the word "perjury".

If State Probation Officer, Mr. Holley, in his interview with Albert "Cotton" Jones, had asked if he had told a lie, Albert "Cotton" Jones would have known what he was talking about. It is unreasonable to believe that an uneducated man could understand fully the meaning of all the words and legal terms used in the affidavit Mr. Holley induced Albert "Cotton" Jones to sign.

Appellant was not present and had no representative there when this statement to Mr. Holley was given. No opportunity to question or cross examine the affiant. Strictly a one-sided affair.

On page eight (8) of the opinion handed down and signed by the Honorable Judge C. A. Leedy, Jr., much has been made of the testimony of Gus Williams, wherein he states that for several years, Albert "Cotton" Jones had become senile and incapacitated. (See Exhibit B.)

Just what qualifies Gus Williams to diagnose another person's mental condition? Does he hold any degrees

or diploma from any reputable college or university of higher learning? The study of human behavior is a deep subject and opinions, to be valid and acceptable as testimony in the higher courts, should come from authorities thoroughly qualified by education and experience. Gus Williams is not an authority on this subject.

Gus Williams testified in behalf of appellant. His testimony was that he was willing to stand on what he had given at the Habeas Corpus hearing in Jefferson City. Since this hearing was conducted in an informal manner, without regard to the applicable rules of evidence, why didn't the prosecuting attorney cross examine Gus Williams on the evidence he gave at Jefferson City?

The prosecuting attorney had a copy of the testimony given at Jefferson City, but he did not ask one question. Outsiders might wonder at this, but to one who is familiar with conditions that exist in St. Joseph, this is easy to understand. Gus Williams still owns and operates the Harlem Club in the City of St. Joseph.

8.

Before the May term of the Circuit Court of Buchanan County in the year of 1945, I, James G. Eaton, Appellant, was approached by one of the go-betweens for the Prosecuting Attorney's Office and informed that if I would place the sum of Five Thousand Dollars ($5,000) in a certain bank in St. Joseph in escrow, that the then Prosecuting Attorney, Joseph A. Sherman, would dismiss the case against me.

I contacted my brother, Roy Eaton, a retired farmer

of St. Joseph, in regard to this matter. He went to see Joseph A. Sherman and made a forceful protest against this kind of a deal. Joseph A. Sherman refused to listen to reason, and Roy finally got angry and told him he would spend the rest of his days trying to break up this pay-off racket. This pay-off system in St. Joseph, at the time of appellant's conviction, was public knowledge to the people of Northwest Missouri. (See Exhibits F and G.)

9.

The relief for an unlawful sentence in Missouri is under Supreme Court Rule 27.26 for a common law Writ of Error Coram Nobis. As adopted, this Rule makes no provision for counsel. Defendant is forced to file this writ in the Court that convicted him in the first place. If they deny him a fair and just trial the first time—what chance does he have for the second round?

The pertinent facts of the case were excluded from the record, and appellant's request for objections were ignored. At the close of this hearing, attorney for defense made no request for findings of facts and conclusions of law, nor did the trial judge make any. Such findings are mandatory under Rule 27.26. Appellant's legal rights were violated in the first trial; and, by the conspiracy and collusion of the so-called "legal" profession, were again violated in the second trial.

10.

The State of Missouri has a statute on perjury. If the evidence given at the Habeas Corpus hearing in Jefferson

City was not factual, why wasn't the statute against perjury invoked? The Attorney General of Missouri and O. R. Newcomer, the prosecuting attorney of Buchanan County, had in his possession at that time, two affidavits of a contradictory nature, as he later testified that he had, why didn't he divulge them in open court?

Said affidavits by Albert "Cotton" Jones and Julia Hollins were marked Exhibits No. Two (2) and No. Three (3) by the State.

11.

It doesn't seem possible nor reasonable that the Court of law that is supposed to render justice, will accept a paper, no jurat affixed, purporting to be a copy of an affidavit that has been "lost", that has only the signatures of the typewriter.

Said purported affidavit, starting with these words, "These remarks were made in the Prosecuting Attorney's Office". This reads like some one might have overheard a conversation and is of no more value than any other hearsay evidence and should not have been admitted. There is no evidence to prove that this affidavit ever existed or that the typewritten copy has not been altered.

In exhibit No. three (3), Julia Hollins makes this remark: "Mr. Newcomer knew that I knew about it." Mr. Newcomer flatly denied that he knew that Julia Hollins had any information favorable to defendant. Why didn't Mr. Newcomer cross examine Julia Hollins when she made this statement at the Habeas Corpus hearing

in Jefferson City? Why didn't he produce the two affidavits he claims to have had in his possession at this time? Why did Mr. Newcomer wait until after the death of Albert "Cotton" Jones and Julia Hollins before bringing in his purported affidavits? He is very careful in claiming that the originals have been "lost". Further, there is no evidence to discredit the testimony of Julia Hollins that William Van Ross was armed with a knife.

Appellant has been informed by parties in position to know that all the records and exhibits relevant to this case have disappeared from the Prosecuting Attorney's Office in St. Joseph, Missouri.

The attorneys that I have employed in Buchanan County to present my case have tried to get all the records in my possession. They claim to have lost or misplaced three sets of transcripts. They thought they had been successful in losing all I had. But the fact is. I had five sets made. When they learned they did not have all of them, they threatened Court action to compel me to give them the rest. These transcripts were replaced at my own expense in order to make the appeal.

The attorneys of Buchanan County have made and signed a legal contract which they now try to repudiate; and, have gone out of their way to discourage appellant from taking this case to the Highest Court.

There has been an attempt on the part of the legal fraternity of Buchanan County to confuse this Court by bringing up mysterious statements purporting to be affidavits not supported by facts. Appellant states that the

facts as presented in this motion were facts that were known to the attorneys at the time it was presented. The facts as presented in this petition, that are not supported by the record, can be proven by competent witnesses and who will appear and testify if given the opportunity. Due to the conspiracy and collusion that existed in the Circuit Court of Buchanan County at the time of the appellant's conviction and the connivance of the legal fraternity, appellant was denied due process of law, and deprived of his Constitutional rights as provided under the Constitution of Missouri, and the Constitution of the United States.

In each hearing, the results have been the same. Appellant's rights have been denied.

Petitioner believes he has been deprived of a fair and impartial hearing and due process of law as guaranteed him as a citizen of the United States and the State of Missouri by Amendments VI and XIV of the Federal Constitution and by the due process clause of the Missouri Constitution, 1945, and in deference of the orderly administration of justice in this State.

O. R. Newcomer was an assistant under Joseph A. Sherman. He served one term as prosecuting attorney after the death of his superior. He conducted his office the same as Joseph A. Sherman; in fact, their system of selling justice had operated in Buchanan County so long, it was public knowledge. If public sentiment was too strong in some of the cases, the accused was sentenced and, in a short time he was sold a parole. O. R. Newcomer was so corrupt in office, the local newspapers in-

stituted a campaign that was responsible for removing him from office.

The Supreme Court of the State of Missouri has knowledge of these facts but still expects this man's actions in the case of the appellant to be unquestioned.

Pressure from the corrupt political element of Buchanan County was applied to obtain the perjured evidence at the original hearing. The same pressure was applied to prevent the same witnesses from appearing at the Habeas Corpus hearing in Cole County, Missouri. Pressure was applied to delay the Coram Nobis hearing in Buchanan County and prevent petitioner from exhausting his State rights. Pressure was applied to prevent Samuel W. James from appearing and presenting the facts at this hearing, and deprived petitioner of the right of counsel. Political pressure prevented Leonard Johnson from presenting the case to the best interest of his client and establishing a record of the facts which he had knowledge of at that time. After the death of Joseph A. Sherman, and before the appointment of O. R. Newcomer to the prosecuting attorney's office, pressure was released and every witness was willing to testify that William Van Ross attacked petitioner with a knife.

This petition is presented solely in the interest of justice. Petitioner asks for nothing personally. When this Court will have the opportunity to rule on this petition, the punishment assessed, eighteen years, will have been served. Petitioner prays the ruling of this Court will be such that will forever abolish this form of injustice in this country. (See Exhibits J, K and L.)

CONCLUSION

Article One, Section Ten, Constitution of Missouri 1945; Section One of the Fourteenth Amendment of the Constitution of the United States provide that no person shall be deprived of life, liberty, or property without due process of law.

Petitioner believes this declaration of the Constitution is synonymous with the words "law of the land" and therefore, must secure for him his fundamental rights. In conclusion, petitioner respectfully submits that the judgment of conviction rendered against him in the Circuit Court of Buchanan County, Missouri, under date of the twenty-second day of May, 1945, under which petitioner was sentenced to a term of eighteen years in the Missouri State Penitentiary, said judgment be declared unconstitutional, null, and void. Petitioner prays the judgment of this Court.

Respectfully submitted,

JAMES G. EATON,
Register No. 59489,
Church Farm,
Missouri State Prison,
Jefferson City, Missouri.

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IN THE

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WASHINGTON, D. C.

OCTOBER TERM, 1957.

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JAMES G. EATON,
Petitioner,

vs.

STATE OF MISSOURI,
Respondent.

From the Supreme Court of the State of Missouri,
Division No. 2.

RESPONDENT'S BRIEF AND ARGUMENT

In Opposition to Petitioner's Application for Writ of Certiorari.

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From the Supreme Court of the State of Missouri,
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RESPONDENT'S BRIEF AND ARGUMENT

In Opposition to Petitioner's Application for Writ of Certiorari.

STATEMENT.

The petitioner herein was convicted of murder in the second degree for the killing of one Willie Van Ross, in the circuit court of Buchanan County, Missouri, May Term, 1945, and was sentenced to imprisonment for a term of

eighteen years. This judgment was affirmed June 10, 1946. State v. Eaton, 355 Mo. 164, 195 S. W. 2d 457.

Petitioner in May, 1947, subsequent to said conviction, and being incarcerated in the state penitentiary, and after the demise of the prosecuting attorney, Joseph Sherman, who participated in his trial in the circuit court of Buchanan County, Missouri, applied to the circuit court of Cole County, for a Writ of Habeas Corpus alleging: (1) That said conviction in the circuit court of Buchanan County, Missouri, was a result of perjured testimony given by one Albert "Cotton" Jones, which perjured testimony was knowingly used by the prosecuting attorney and: (2) From the prosecuting attorney suppressing evidence favorable to the accused and corroborative of his defense of self-defense. The charges alleged in said petition were thoroughly explored in a very extensive hearing in a finding adverse to petitioner and he was remanded to the custody of the warden.

Reference is made to the foregoing hearing on application for a Writ of Habeas Corpus for the reason the transcript of said hearing was marked as an exhibit and introduced in evidence in this case in the circuit court of Buchanan County, Missouri.

The proceeding complained of in this petition for Writ of Certiorari was instituted in the circuit court of Buchanan County, Missouri, by filing a motion in the nature of a Writ of Error Coram Nobis, said motion was amended by leave of court praying for the same relief, that said judgment and sentence be vacated and set aside on the same grounds alleged in the foregoing application for Writ of Habeas Corpus filed in the circuit court of Cole County, Missouri.

This motion was dismissed as an improper remedy without hearing any evidence; on appeal to the Supreme Court

of Missouri, that court held the allegations in said application entitled the petitioner to a hearing under the Supreme Court Rule 27.26, Vol. 42, V. A. M. S., and the cause was remanded for further proceedings not inconsistent with the opinion.

A hearing was held on the application and resulted in an order or judgment denying the motion and refusing to vacate the judgment and the petitioner appealed to the Supreme Court of the State of Missouri. The Supreme Court in State v. Eaton, Mo. Sup. 302 S. W. (2d) 866, affirmed the judgment denying the motion to vacate and set aside. The motion for rehearing was denied on June 10, 1957.

ARGUMENT.

I.

Respondent was not served with a copy of this petition for Writ of Certiorari.

So far as respondent is able to determine it was not served with a printed copy of this petition for a Writ of Certiorari within ten days after filing same in the Supreme Court as required by the rule of the Supreme Court.

The records of this Department fail to disclose that a copy of the Petition was ever served on it and the first copy of such petition was presented to this respondent was with a letter from the clerk of the Supreme Court of the United States under date of November 6, 1957, enclosing a copy of said petition and advising that said petition for Writ of Certiorari was filed in the Supreme Court of the United States on September 6, 1957, and that his records indicate respondent was served with a copy of same, and further advising that the court desires a response to said petition.

If it is true that no such service was had on respondent then said petitioner is not in court and the matter should be dismissed.

II.

The State did not suppress evidence.

This killing of Willie Van Ross occurred in the Harlem Club, 215 Francis Street, St. Joseph, Missouri. Said Club was operated by two colored men, Albert "Cotton" Jones and Gus Williams. The petitioner and companion, Harold Firpo Simmonds, are both white men. This killing followed after hours of drinking and gambling and an altercation by these two white men with a negro, Andrew

Hawkins, who had won at cards some $40 of their money. The proprietor was able to get the petitioner to take Simmonds and leave the premises. After visiting other places and drinking they returned to the Harlem Club. The decision of the Supreme Court of Missouri in **State v. Eaton,** Mo. Sup., 302 S. W. 2d 866, l. c. 869, sets forth in detail all of the facts introduced in evidence leading up to the homicide.

We assume the suppression of evidence charge is that the state failed to call Julia Hollins as a witness. There is some evidence that she had informed the prosecuting attorney that she saw a knife in the deceased's hand and, furthermore, she was endorsed as a state witness. However, she was not called to testify for the state.

Julia Hollins was an employee of said Club and a witness to the homicide. As stated hereinabove, she was endorsed as a witness on the information and she was also present at the trial and counsel for petitioner knew she was at the trial. **State v. Eaton,** supra, l. c. 873.

After the death of the prosecuting attorney she made an affidavit prepared by defendant's counsel stating that she was present at the shooting, that she observed a knife in the deceased's hand, which blade was open and protruding as he advanced toward said petitioner, and that she had so informed the prosecuting attorney. That the petitioner, or his counsel, were never informed as to what her testimony would be. She later made an affidavit on July 31, 1947, at the office of the prosecuting attorney wherein she states that she saw the knife when the deceased first pulled it on Firpo Simmonds in the barroom at said Club. That she was afraid and wanted nothing to do with it. The evidence discloses this was the first time she told anyone about seeing the knife except a statement to Waldo Goff, counsel for petitioner. That she was not threatened by anyone not to tell.

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At a subsequent hearing on motion for new trial in the Habeas Corpus proceeding January 10, 1948, she stated that she saw the knife in Van Ross's hand, furthermore, that she told the prosecuting attorney that she saw said knife in his hand but on cross-examination she testified as follows:

"'Q. Did you have any conversation with Mr. Sherman or Mr. Newcomer the morning after this crime occurred?

A. Yes, sir.

"'Q. Did you have any other conversation with him, and did you tell them at that time that you had seen the knife in the hands of Van Ross?

A. No, sir.

"'Q. You knew at that time that you thought you saw a knife?

A. I knew I had seen the knife.

"'Q. Did he ask you about any weapons?

A. No, sir. I went back upstairs. I didn't stay there very long.

"'Q. Did you have any reason for not telling him about the knife?

A. No. I didn't have any reason, other than I didn't want to be bothered or mixed up in it.'"

The court further said at l. c. 874:

"Mr. Newcomer specifically denied that he had any knowledge that Julia Hollins saw, or claimed to have seen the knife referred to in her affidavit and subsequent testimony.

"He testified that on the morning of the shooting, when he was at the Harlem Club interrogating prospective witnesses, Julia was there, and he asked her about the knife and 'she didn't know anything about it at all.'"

This court, in **State v. Eaton**, Mo. Sup., 302 S. W. 2d 866, l. c. 874, held that the State of Missouri does not follow

the rule that it is the duty of the prosecuting attorney to call everyone who was an eyewitness to the homicide whether it favors the commonwealth case or not. **State v. McAfee,** 148 Mo. 370, 50 S. W. 82, 84; **State v. Dixon**, Mo. Sup., 190 S. W. 290.

Assuming, for the sake of argument only, that Julia Hollins did inform the then prosecuting attorney of having seen a knife in deceased's hands at the time of the homicide, he was not absolutely bound to use such evidence in the trial of said petitioner if he did not believe it or he had other evidence clearly indicating to him that it was not the truth. All of these affidavits and testimony of seeing this knife in deceased's hand was never produced until after the demise of said prosecuting attorney. The state introduced evidence that deceased had no weapon at the time of the homicide.

Therefore, respondent contends there is no merit to the contention that the prosecuting attorney knowingly suppressed evidence and that said petitioner was deprived of any constitutional rights.

III.

The state did not knowingly introduce any perjured testimony.

The so-called perjured testimony alleged to be known to be perjured by the prosecuting attorney, referred to in said petition for Writ of Certiorari, apparently has reference to the testimony of Albert "Cotton" Jones at the trial to the denial that he saw deceased draw a knife on the petitioner or that he say any knife or weapon in the deceased's hands.

Three affidavits were made by this witness subsequent to testifying at the original trial. The first affidavit was filed with the petitioner's application for Writ of Habeas

Corpus wherein said witness stated that he was instructed by the prosecuting attorney as to what his testimony would be and that he was compelled to so testify as a result of the use of high pressure, coercion and threats by said prosecuting attorney and was testifying under duress. He did not testify at the main Habeas Corpus hearing, but at said trial his second affidavit was introduced restating the contents of one affidavit hereinabove referred to and in addition thereto stated that if he had not been under duress he would have testified that the defendant was compelled to shoot Van Ross to protect himself. That defendant shot at least twice in the floor to endeavor to stop Van Ross. That when he was asked the question, did Van Ross at any time or any other time have any weapon in his hands, he answered he did not see any, he was of that opinion because of the statement of Bert Lacey and Julia Hollins who were in better position to see that Willie Van Ross did have a knife.

During the pendency of a motion for rehearing in the Habeas Corpus proceeding in Cole County and on January 3, 1948, petitioner's attorney filed another affidavit of Albert "Cotton" Jones, which stated that he was intimidated, coerced and threatened by the prosecuting attorney and compelled to offer false and perjured testimony against said petitioner to the effect that the deceased did not have any such knife. That the prosecuting attorney would obtain an injunction against him and padlock the Harlem Club and file an information charging him with the commission of a felony of setting up improper conduct of said place and would cause the sheriff to arrest him, all of which caused him to present false and perjured evidence.

An affidavit of Gus Williams accompanied Jones' affidavit stating that he had heard what transpired between the prosecuting attorney and Jones. This is what the Supreme Court of Missouri had to say with regard to such

affidavits in **State v. Eaton**, Mo. Sup., 302 S. W. 2d 866, l. c. 871:

> "Both affiants, Jones and Williams, testified on the motion for rehearing in the habeas corpus case, the transcript of which is before us, from which it appears that the testimony of each represents, in substance and effect, a composite of their several affidavits. Their examinations were marked by contradictory and confusing answers in reply to highly leading and suggestive questions.
>
> "Gus Williams, when testifying before Judge Rooney, was a reluctant and uncertain witness. His memory was not at all good, and he would not undertake to recall what had transpired between himself and Jones, on the one hand, and the prosecutor, on the other, nor to what he had testified at the habeas corpus hearing. Instead, he was willing to stand on the latter testimony—whatever it may have been—because the facts were then fresher in his mind. But he did state that for several years before his death Albert 'Cotton' Jones had become so senile as to be incapacitated. As the perjury aspect of the case turns on 'Cotton's' veracity and the credence to be given his declarations, we deem it unnecessary to burden this opinion by stating the effect of other evidence produced by defendant which is not relevant to this question."

An interview between a state probation and parole officer and Jones was made and reduced to writing and introduced in evidence to which no objection was raised which, in sum and substance, is that Jones examined the affidavit prepared by his counsel, but was unable to understand it, and further disclaimed any knowledge of having admitted in the affidavit that he committed perjury at the original trial. The interview concluded with Jones' declaration that he would stand on both his statements, those given to the

petitioner and the subsequent conflicting one given to the prosecuting attorney.

The state further introduced other evidence of witness Strother, who witnessed the homicide and testified that he saw no weapon in the deceased's hand, and other evidence of investigation immediately following the homicide at which time inquiries were made of some seven or eight persons standing around, including Julia Hollins, as to how it all happened, and there was no mention whatsoever of the deceased having a knife.

We have no quarrel to pick with decisions holding the use of perjured testimony, known to be perjured by prosecuting authorities, constituted deprivation of rights guaranteed by the Constitution of the United States. However, respondent respectfully submits that no such perjured testimony was knowingly used by the prosecuting attorney in these proceedings, and neither was there any suppression of evidence. The petitioner failed to introduce any evidence showing wherein the prosecuting attorney deliberately suppressed any evidence.

Conclusion.

Wherefore, respondent respectfully submits that petitioner herein was not deprived of any rights under the laws and Constitution of Missouri and the United States, and said petition for Writ of Certiorari should be denied.

Respectfully submitted,

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